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No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States

October Term, 1993

ROBERT G. STEELE,

Petitioner,

v.

STATE BAR OF MONTANA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The Montana Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Allen B. Chronister
Counsel of Record
Penwell Building
34 West Sixth Avenue
P. O. Box 1152
Helena, MT 59624
(406) 449- 3691

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STATEMENT OF THE CASE

Petitioner is a certified public accountant who has practiced in the State of Montana since 1973. He was a student at the University of Montana School of Law from 1987 until 1991. In late 1990 he applied to take the Montana bar examination scheduled for February, 1991. The application was reviewed by the Committee on Character and Fitness of the State Bar of Montana (the Committee).

In Montana the admission of attorneys to practice law is governed by the Montana Supreme Court. Montana Constitution, Art. VII, § 2. The Court has appointed the Committee to investigate and determine the character and fitness of candidates for admission to the bar. Rules for Admission to the Bar of the State of Montana, Section IV. No candidate may take the bar examination until certified by the Committee. Rules for Admission,

Section III. Every applicant must be "of good moral character," and has the responsibility

> [T]o demonstrate to the satisfaction of the Committee that the applicant would, if admitted to practice law in Montana, be able to act in accordance with the standards set forth in the Montana Rules of Professional Conduct, fairly, honestly, reasonably, and with unquestionable integrity in all matters in which he or she acts as an attorney at law.

Rules for Admission, Section IV.

The Committee's Rules of Procedure define "good moral character" to mean

> [Q]ualities of fairness, discreteness, honesty, reasonableness, unquestionable integrity, and ability and willingness to act in accordance with standards set forth in the Montana Rules of Professional conduct.

Rules of Procedure of the Committee on Character and Fitness, Section 2. The Rules of Procedure contain a list of 13 types of acts or conduct, the discovery of which will cause "further inquiry" by

the Committee. Rules of Procedure Section 3. The Rules of Procedure further specify 10 factors that the Committee will use in evaluating the weight and significance of prior conduct. Rules of Procedure Section 3.

The Committee's decisions are subject to review *de novo* upon the entire record by application to the Montana Supreme Court. Rules of Procedure, Section 5, *In re Pedersen*, 820 P.2d 1288 (Mont. 1991). After one year, any applicant may reapply to the Committee for certification upon demonstration of "clear and convincing evidence of rehabilitation and current fitness to practice law." Rules of Procedure (1993), Section 7.

The Committee reviewed petitioner Steele's application and on December 26, 1990, it declined to certify him to take the examination based upon its finding of unlawful conduct and neglect of financial responsibilities. Steele submitted additional documentation to the Committee, which again

denied certification. Steele objected to the Committee's action, and in May, 1991, the Committee held an informal hearing with petitioner Steele, as provided in its Rules of Procedure.

In August, 1991, the Committee notified Steele that it had again denied certification. Steele subsequently requested reconsideration, and after several continuances a formal hearing was held before the Committee on March 5, 1992. The Committee heard testimony and received documents, and at Steele's request continued the hearing to allow him to conduct additional discovery, including depositions. After discovery was concluded and Steele presented additional materials, the Committee on August 24, 1992, issued its Findings of Fact, Conclusions of Law and Final Decision denying his application.

Steele appealed the Committee's denial to the Montana Supreme Court. After independently reviewing the record and the briefs, the Court on

December 22, 1993, upheld the Committee's denial of certification.

The Committee's Findings noted several major concerns about Steele's background. First, Steele failed to pay state or federal income taxes for the years 1982 through 1986 even though he had income and had the means to pay the tax at the time. He did not file complete returns for those years until at or about the time he entered law school. By the time of the hearings before the Committee, his acknowledged federal tax liability was over $200,000 and his state liability was over $20,000.

Steele's reason for not filing returns was his insistence that income tax returns could not be completed without violating certain Fourth and Fifth Amendment rights. Taking the 1982 return as an example, almost every line on the return contains a "0" except for interest income, which is listed as $1,000. The lines requesting business income, capital gains, itemized deductions, charitable contributions

and self employment tax are answered "privacy & self incrimination, object 4th & 5th Amendment." The line for indicating tax due is blank. When Steele states in his petition to this Court (page 8) that he refused to supply "certain information" on his returns, this is what he means.

Steele subsequently further justified his failure to file complete returns by the fact that he had been under criminal investigation by the Internal Revenue Service at the time. However, it appears that Steele filed the 1982 and probably the 1983 "5th Amendment" returns before the investigation was started, and before Steele knew of its existence.

In mid-1987 Steele finally filed 1982-1986 returns and for the first time acknowledged that he earned income and owed taxes for those years. While Steele now characterizes these as "complete" returns, they indicate only estimated income in round numbers. Despite being a CPA with an active tax practice, Steele claims that he did not keep records

of his income and expenses for the 1982-1986 period. He also claims that by 1987 his protest activities had been, instrumental in getting sufficient changes enacted in the United States tax laws so that he could file his returns without jeopardizing his Constitutional rights.

Steele has never paid the taxes due on his 1982-1986 income. His justification for not having paid the taxes is that he lost the money he could have used for that purpose by investing it in commodities futures. He did this despite acknowledging that he knew then and knows now that he had tax liability for those years. Further, Steele's application to the Committee claims that he lost this money in 1983, while he acknowledges now that for the years 1983 through 1986 he had annual income that varied between from $25,000 to $40,000. He did not set aside any money in any fashion to pay the taxes. This is not a case about getting penalized for making bad investment decisions. It is about a CPA who refused

to file returns, who refused to pay taxes he knew he owed and would have to pay some day, who refused to keep records of his own income and expenses, and who justifies his inability to pay with an inconsistent story about commodities futures losses.

It was only after the Committee initially determined to deny his certification that Steele made the first offer to pay any of his tax liability. Steele's "plan" to pay his taxes was an offer to compromise his $200,000 federal tax liability for $3,544 and his $20,000 state tax liability for $381. Neither offer was accepted by the taxing entities and the tax remains outstanding and unpaid.

The Committee further found that Steele was not candid in his disclosures during the application process. He did not disclose on his application a lawsuit that he had filed against the IRS arising out of his tax resisting activities. (The application asks for a list of any civil proceedings in which the applicant has been a party.) Steele appealed this

action to the Ninth Circuit Court of Appeals, and it involved Steele's liability for a $500 IRS assessment for filing a frivolous return. While Steele continues to assert that he "won" that case, the only decision from the Circuit was to remand to the District Court for consideration of certain issues that Steele had raised. (*Steele v. United States*, No. 84-3977 (9th Cir. 1986)(unpublished opinion.) Steele claimed that he "forgot" to list this matter and has never denied failing to disclose the action.

The Committee further found that Steele did not disclose that he had been the subject of two criminal investigations by the IRS. (The last question on the application requested any other information bearing on character and fitness.) Steele never disclosed this to the Committee, which found out only after the information was furnished by the IRS after the first hearing. The first IRS investigation, noted above, resulted from his failure to file complete 1982-1986 returns, and the second resulted

from his failure to pay taxes after he acknowledged they were due after 1987. The first IRS investigation, at least, was very relevant to Steele's application because once it was disclosed Steele contended that the existence of the investigation was his justification for not filing returns from 1982 to 1986.

Throughout the Committee proceedings Steele was evasive in his responses and continually sought to conceal, and then to minimize his tax difficulties, his failure to comply with the tax laws and regulations and his relationship with the IRS. The Committee found that Steele's ignoring the law; building a tax liability over $200,000; failing to make provision for paying the tax and squandering the money he had and then being incomplete and evasive about the facts demonstrated that he was not a person of good character who should be certified to take the bar examination.

Steele continues with this same course of conduct even in his petition to this Court. On page 8

of his petition, for example, he states that the IRS never challenged his "5th Amendment" returns for 1982-1986. This is a preposterous assertion. The record contains specific notifications and demands from the IRS to Steele requesting complete returns for those years. The IRS launched a criminal investigation of Steele based in large part upon his having filed those returns. The lawsuit that he "forgot" to disclose arose because the IRS fined Steele $500 for filing a "frivolous" return for one of those tax years. Steele has no basis for asserting to this Court that the IRS did not object to his activities, but this is typical of his responses throughout this matter.

Petitioner continues to paint the facts to suit his view of the case. For example, Steele states to this Court (Petition, p. 14) that the IRS never directly alleged that it was a violation of IRS regulations for him to fail to file a return, and that the IRS District Counsel "admitted" this at the hearing. The record

shows that the IRS wrote Steele after he made his 1982 "5th Amendment" filing that "it does not contain information that the law requires you to give, and it does not comply with certain Internal Revenue Code requirements." (Letter of May 30, 1983). Further, the IRS District Counsel, Virginia Cochran, testified only that willful failure to file a return constituted criminal conduct. (Transcript of March 5, 1992, at 26.) It is a large leap from these facts to the impression that Steele wants to create, which is that the IRS had no objections to his approach to his own tax liabilities.

The Montana Supreme Court reviewed Steele's contentions, examined the entire record before the Committee and affirmed. *In Re the Petition of Robert G. Steele,* 865 P.2d 285 (Mont. 1993)(Filed as an appendix to the petition herein).

ARGUMENT

Petitioner Steele has made no effort to show any substantial reason why this Court should spend its time on his case. None of the considerations in Rule 10.1, Supreme Court Rules, for granting a writ, or anything remotely similar, are present in this case. The "principal purpose" of granting certiorari is to resolve conflicts among the circuits and state courts concerning federal law. *Braxton v. U.S.* __ U.S. __, 111 S.Ct. 1854, 1857 (1991). The writ is also appropriate to consider a decision on a federal issue of substance not previously considered by this Court, or inconsistent with decisions of this Court. *Mackey v. Lanier Collections*, 486 U.S 825, 826 (1988); *Duren v. Missouri*, 439 U.SD. 357 (1979). If considerations like these do exist in the present case, petitioner has not described them in his petition. This case does not involve a decision by a United States Court of Appeals that conflicts with any other decision. This

case does not involve a state court decision that decides a federal question in a way that conflicts with the decision of another court, state or federal. In sum, petitioner has presented this Court with no substantial reason for granting his petition.

Rather than addressing established criteria for moving this Court's discretion to grant a writ of certiorari, the portion of petitioner's brief entitled "Reasons for Granting the Writ" (pages 24-27) is a litany of vague allegations about manipulation of the bar by "outside interests;" threats to the system of checks and balances; the disintegration of the separation of powers; and executive branch control over the judiciary. Even assuming that some of these types of issues might interest this Court in a petition for writ of certiorari, they are just not present in this case. These "issues" were not present in the proceedings below and provide no basis for a petition for certiorari.

While petitioner Steele has presented this Court with six questions for review (Petition, pp. i-ii), they all involve the same general allegation that the Committee did not sufficiently explain its reasons for not certifying him to take the bar examination. This failure to explain allegedly violated Steele's right to the due process of law. Steele's due process allegations fly in the face of the facts of this case. The Montana Supreme Court considered each of the Committee's findings that Steele challenged and upheld them on the record. As noted above, the Committee provided Steele with more than ample process and he is wholly aware of the reasons for the Committee's decision and of the reasons why the Montana Supreme Court affirmed.

Petitioner participated in two separate hearings before the Committee. He was given a continuance during one hearing so that he could do additional discovery and could take depositions. He was allowed multiple opportunities to submit documents

for the record and did so. The Committee clearly informed him as early as its August 23, 1991 denial letter which aspects of his conduct were in issue. The Committee was concerned about his enormous unpaid tax liability; about his failure to comply with tax law and regulations; about his explanation that he "lost" the money that should have gone for taxes; about his omitting information about the IRS lawsuit and the criminal investigation; and about his DUI convictions. *In Re the Application of Steele, supra,* 865 P.2d at 288. This case is not about a CPA with a "faultless record" being kept from the practice of law because of what Steele euphemistically refers to as a "personal debt." (Petition, pp. 19-20.) Steele always knew, and knows now, the facts and conduct upon which the Committee based its decision not to certify him to take the examination. No violation of due process has been stated.

Every state requires that applicants for admission to the bar meet some "good character"

standard, and this requirement has been upheld by this Court. *Law Students Research Council v. Wadmond*, 401 U.S. 154, 159-60 (1971). Further, it is up to the states to determine whether to screen bar applicants prior to admission, or to essentially let everyone in and then use sanctions to deter and punish serious breaches of good conduct. *Law Students Research Council, supra*, 401 U.S. at 167.

The system that Montana has chosen, and which it applied in this case, is a valid exercise of the state's power and gives bar applicants ample process during which to present themselves for admission. The fact that Steele irresponsibly allowed himself to fall into a tax liability of over $220,000 while squandering the money that would have paid at least part of the tax is reason alone for denying certification to take the examination. The courts of several other states have so concluded in similar circumstances. *In Re Anonymous*, 549 N.E.2d 472 (N.Y. 1989)(inability to control amount of

indebtedness evidenced lack of financial responsibility); *In Re Application of Charles M.*, 545 A.2d 7 (Md. 1988)(moral fitness not shown by applicant who stopped check on carpet payment, used bankruptcy to delay foreclosure and gave inconsistent testimony); *In Re Application of Taylor*, 647 P.2d 462 (Or. 1982)(discharge of student loan obligations through bankruptcy); and *In Re Beasley*, 252 S.E.2d 615 (Ga. 1979)(failure to pay child support and comply with child support orders.)

Petitioner also mentions an equal protection argument, but the only apparent discussion of it is on page 23 of the Petition. At that page he quotes an alleged newspaper article about an attorney who has had disciplinary problems, and who was last censured for shoplifting. Apparently the point is that if this other lawyer was not disbarred for shoplifting then Steele should be allowed to sit for the bar examination. This analogy is too subtle for the respondents to analyze.

The practice of law is a matter of right only to those qualified by learning and moral character. *Baird v. State Bar of Arizona*, 401 U.S. 1, 8 (1971). The record below shows that petitioner Steele was properly not certified to take the bar examination. Until he obtains certification and passes the examination, he is not entitled to admission to the bar in Montana.

Petitioner has presented this Court with no cogent reasons why a writ should issue in this case. The respondents pray that the petition be denied.

Respectfully submitted,

Allen B. Chronister
Counsel of Record
Penwell Building
34 West Sixth Avenue
P. O. Box 1152
Helena, MT 59624
(406) 449-3691